

Message Text

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ACTION EUR-25

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FM USMISSION BERLIN

TO SECSTATE WASHDC IMMEDIATE 3436

AMEMBASSY BONN IMMEDIATE

C O N F I D E N T I A L SECTION 1 OF 2 BERLIN 881

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E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: BERLIN DEMOCRATIC CLUB VS. SCHLESINGER--

USCOB AFFIDAVIT

REF: BERLIN 839

1. SUMMARY: DEPARTMENT OF ARMY TELEGRAM RECEIVED BY
USCOB MAY 25 CONTAINS TEXT OF USCOB AFFIDAVIT AND
STATES THAT IT HAS BEEN APPROVED BY SMALL, L/EUR,
AND T. BECKER, EUR/CE. DEPARTMENT OF ARMY LAWYER KIRBY
ARRIVED IN BERLIN MAY 25 WITH ORAL ARMY INSTRUCTION
THAT, SUBJECT TO USCOB'S APPROVAL, AFFIDAVIT SHOULD BE
EXECUTED IMMEDIATELY AND KIRBY SHOULD CARRY IT BACK TO
WASHINGTON WITH HIM SAME WEEKEND. WE ADVISED
USCOB THAT WE HAD NOT HAD OFFICIAL WORD FROM DEPART-
MENT THAT IT DESIRED AFFIDAVIT TO BE EXECUTED IN
PRESENT FORM. SMALL INFORMED MISOFF IN TELCON MAY 24,
HOWEVER, THAT DISTRICT COURT JUDGE HAD GRANTED
GOVERNMENT'S REQUEST FOR FURTHER EXTENSION UNTIL
JUNE 6 AND THUS THAT NO DOCUMENTS WOULD BE SUBMITTED
FOR NEARLY TWO WEEKS. USCOB SAID THAT HE WOULD
NOT WISH TO SIGN AFFIDAVIT BEFORE AMBASSADOR HAD
OPPORTUNITY TO REVIEW IT. KIRBY INDICATES HE IS
UNDER INSTRUCTIONS TO REMAIN IN BERLIN UNTIL HE CAN
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CARRY AFFIDAVIT BACK TO WASHINGTON.

2. WE HAVE REVIEWED AFFIDAVIT AND CONSIDER THAT IF TIME IS OF ESSENCE OR IF FOR OTHER REASONS DEPARTMENT DOES NOT WISH TO ENGAGE IN FURTHER DEBATE ON AFFIDAVIT, IT COULD BE ACCEPTED SINCE IT IS IMPROVEMENT OVER DRAFT DISCUSSED REFTEL AND WOULD NOT PREJUDICE ESSENTIAL STATE INTERESTS. ON OTHER HAND, AS DISCUSSED PARA 4 BELOW, TEXT COULD STILL BE IMPROVED.
END SUMMARY.

3. FOLLOWING IS TEXT OF AFFIDAVIT CARRIED BY KIRBY:

(1) BEGIN TEXT: I AM A MAJOR GENERAL, UNITED STATES ARMY. SINCE MAY 1971, I HAVE SIMULTANEOUSLY BEEN COMMANDANT, UNITED STATES SECTOR, BERLIN; UNITED STATES COMMANDER, BERLIN, DEPUTY CHIEF, UNITED STATES MISSION, BERLIN; AND COMMANDER, UNITED STATES ARMY, BERLIN.

(2) BERLIN IS OCCUPIED PURSUANT TO WARTIME AND POSTWAR AGREEMENTS BY THE FOUR VICTORIOUS POWERS OF WORLD WAR II. EACH POWER--THE UNITED STATES, THE UNITED KINGDOM, FRANCE, AND THE SOVIET UNION-- HAS PRIMARY AUTHORITY WITHIN ITS RESPECTIVE SECTOR OF THE CITY. EAST BERLIN IS THE SOVIET SECTOR OF BERLIN. THE THREE WESTERN SECTORS OF BERLIN HAVE BEEN SUBJECT TO THE GENERAL GOVERNMENTAL SUPERVISION OF A TRIPARTITE ALLIED KOMMANDATURA AND THAT OF THE INDIVIDUAL OCCUPYING POWERS WITHIN THEIR RESPECTIVE SECTORS. THE WESTERN SECTORS OF BERLIN CONTINUE NOT TO BE CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND NOT TO BE GOVERNED BY IT, ALTHOUGH THEY MAINTAIN AND CONTINUE TO DEVELOP IMPORTANT TIES TO THE FEDERAL REPUBLIC SUCH AS LEGAL, CULTURAL AND ECONOMIC TIES.

(3) BECAUSE OF THE UNIQUE CHARACTER OF BERLIN AS AN OCCUPIED CITY, I AM CHARGED WITH DUTIES BOTH MILITARY AND GOVERNMENTAL IN NATURE. THE UNITED STATES AMBASSADOR TO THE FEDERAL REPUBLIC OF GERMANY IS THE CHIEF OF THE UNITED STATES MISSION IN BERLIN AND IS THUS THE SENIOR CONFIDENTIAL

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UNITED STATES GOVERNMENT OFFICIAL IN GERMANY WITH RESPONSIBILITIES FOR BERLIN. I AM APPOINTED AS HIS PERSONAL REPRESENTATIVE IN BERLIN AND AM AUTHORIZED IN HIS BEHALF TO PERFORM SPECIFIED GOVERNMENTAL FUNCTIONS. IN ADDITION, I HAVE OVERALL RESPONSIBILITY FOR THE OPERATIONAL READINESS OF THE UNITED STATES FORCES IN BERLIN, WHICH TOGETHER WITH BRITISH AND FRENCH FORCES IN HAVE ULTIMATE RESPONSIBILITY FOR THE PHYSICAL SECURITY

OF THE THREE WESTERN SECTORS OF BERLIN. PHYSICAL SECURITY IS ESSENTIAL FOR THE MAINTENANCE OF THE VIABILITY OF THOSE SECTORS. THE BRITISH AND FRENCH COMMANDANTS AND I ARE THE SENIOR MEMBERS OF THE ALLIED KOMMANDATURA, THE TRIPARTITE STRUCTURE THROUGH WHICH THE ALLIES EXERCISE THEIR SPECIAL RIGHTS AND RESPONSIBILITIES IN THE WESTERN SECTORS OF BERLIN. AS THE FINAL LEGAL AUTHORITY IN THE WESTERN SECTORS, THE KOMMANDATURA PROMULGATES ORDERS WITH THE FORCE OF LAW AND ISSUES LETTERS OF INSTRUCTION BINDING UPON THE LOCAL GERMAN GOVERNMENTAL AUTHORITIES.

(4) I AM KNOWLEDGEABLE GENERALLY ABOUT UNITED STATES MILITARY COUNTERINTELLIGENCE ACTIVITIES IN BERLIN, WHICH ARE CARRIED OUT PURSUANT TO THE AUTHORITY OF THE COMMANDER-IN-CHIEF, US ARMY EUROPE UNDER EXECUTIVE ORDER 10608, TO PROTECT THE SECURITY OF THE FORCES, AGAINST ESPIONAGE, SABOTAGE, AND SUBVERSION.

(5) BERLIN IS AN ENCLAVE LOCATED 110 MILES INTO THE GERMAN DEMOCRATIC REPUBLIC. THE WESTERN SECTORS OF THE CITY ARE SURROUNDED ON THREE SIDES BY THE GERMAN DEMOCRATIC REPUBLIC AND ON THE FOURTH BY THE SOVIET SECTOR OF BERLIN. IT IS SIGNIFICANT IN THIS REGARD THAT THE SOVIET UNION AND THE GERMAN DEMOCRATIC REPUBLIC HAVE FIVE DIVISIONS WITHIN A RADIUS OF 20 MILES OF THE CITY. FURTHERMORE, THE ALLIES HAVE INSISTED ON ALLOWING UNIMPEDED MOVEMENT WITHIN THE FOUR SECTORS THEREBY FACILITATING ACCESS TO THE WESTERN SECTORS FROM THE SOVIET SECTOR.

(6) BERLIN IS ONE OF OUR PRINCIPAL FOREIGN CONCERNS. BERLIN HAS LONG BEEN REGARDED AS SYMBOLIC OF OUR CONFIDENTIAL

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COMMITMENT TO OUR ALLIES AND TO PARTIES TO OUR TREATY OBLIGATIONS AND TO THE PRINCIPLE OF SELF-DETERMINATION. BERLIN'S STRATEGIC LOCATION DEEP WITHIN COMMUNIST TERRITORY IS ALSO OF CONSIDERABLE SIGNIFICANCE AND VALUE TO UNITED STATES FORCES IN EUROPE AND TO NATO. IT IS A MAJOR POINT OF ENTRY FOR FOREIGN INTELLIGENCE AGENTS TO GAIN ACCESS TO THE WEST AND IS THE FOCAL POINT OF A CONSIDERABLE AMOUNT OF ESPIONAGE ACTIVITIES IN WHICH MANY FOREIGN POWERS ARE ACTIVELY ENGAGED.

(7) AS A RESULT OF BERLIN'S LOCATION AND ITS STRATEGIC AND SYMBOLIC IMPORTANCE, IN ADDITION TO TAKING ACTION TO PRESERVE THE SECURITY AND READINESS OF OUR TROOPS AND TO GUARD AGAINST SUBVERSION, ESPIONAGE AND SABOTAGE DIRECTED AGAINST OUR FORCES, MY COMMAND MUST TAKE EVERY

PRECAUTION NECESSARY TO PROTECT AGAINST UNITED STATES
TROOPS ENGAGING IN CONDUCT EMBARRASSING TO THE PRESENCE
OF THE ALLIES OR INCOMPATIBLE WITH QUADRIPARTITE BERLIN
ARRANGEMENTS. IT IS A FACT OF LIFE IN BERLIN THAT
EVENTS IN THE WESTERN SECTORS COULD CONCEIVABLY
OCCASION A SOVIET REACTION.

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ACTION EUR-25

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(8) THE UNITED STATES COMMAND, BERLIN, HAS SEVERAL
MISSION. THE MILITARY MISSION IS TO PROVIDE SECURITY
FOR THE UNITED STATES SECTOR OF BERLIN AND, IN COOPERA-
TION WITH THE TROOPS OF THE UNITED KINGDOM AND OF FRANCE,
FOR THE WESTERN SECTORS OF BERLIN. AS PREVIOUSLY
INTIMATED, MOREOVER, OUR FORCES HAVE AN ADDITIONAL
MISSION OF REPRESENTING THE COMMITMENT OF THE UNITED
STATES TO BERLIN. IN ORDER TO PERFORM THESE MISSIONS,
UNITED STATES FORCES MUST APPEAR TO, AND ACTUALLY
MAINTAIN A HIGH STATE OF READINESS. IN ADDITION, IN
THE EVENT OF CIVIL DISTURBANCE EXCEEDING THE CAPABILITY
OF LOCAL POLICE, WHETHER OR NOT FOMENTED FROM OUTSIDE
THE WESTERN SECTORS OF BERLIN, OUR FORCES MAY BE
REQUIRED TO PARTICIPATE IN PRESERVING THE INTERNAL
SECURITY OF THE CITY.

(9) THE UNITED STATES FORCES IN BERLIN HAVE BEEN AND
CONTINUE TO BE THE TARGET OF IDENTIFIED FOREIGN INTELLIGENCE

SERVICES. IN ADDITION, SOME PERSONS AND ORGANIZATIONS ACTING INDEPENDENTLY MAY CARRY OUT ILLEGAL ACTIVITIES DIRECTED AGAINST THE UNITED STATES IN BERLIN.

(10) EXAMPLES OF HOSTILE ACTIVITY WITHIN THE LAST THREE
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YEARS INCLUDE THE DESTRUCTION OF TWO AUTOMOBILES WITH UNITED STATES ARMY, EUROPE, LICENSE PLATES--ONE BY A FIREBOMBING IN SEPTEMBER 1971, AND THE OTHER BY A BOMB IN APRIL 1972; THE PLANTING OF A BOMB. DEACTIVATED LESS THAN AN HOUR BEFORE IT WAS TO EXPLODE, OUTSIDE A CELLAR WINDOW OF THE OFFICERS' AND CIVILIAN EMPLOYEES' OPEN MESS IN APRIL 1972, AT THE UNITED STATES HEADQUARTERS IN BERLIN; THE DETONATION OF A BOMB ON DECEMBER 24, 1972, WHICH DAMAGED THE UNITED STATES ARMY BERLIN NON-COMMISSIONED OFFICERS' CLUB; AND THE PLANTING OF TWO BOMBS, ONE DISCOVERED BUT TWO MINUTES BEFORE IT WAS TO HAVE EXPLODED, UNDER AN AIR FORCE DISPLAY AIRCRAFT AT THE MAIN CIVILIAN AIRPORT OF BERLIN IN APRIL 1972. THERE HAS ALSO BEEN ACTIVITY WHICH GAVE RISE TO CONCERN THAT UNITED STATES SOLDIERS IN BERLIN MIGHT BE THE TARGETS OF SUBVERSIVE ACTION, INCLUDING SOLICITATION TO DESERT.

(11) BECAUSE OF THE POTENTIAL SUBVERSION, ESPIONAGE, AND SABOTAGE AGAINST OUR FORCES, AND THE IMPORTANCE OF THE UNITED STATES ROLE IN BERLIN, IT IS NECESSARY TO UTILIZE, WHEN APPROPRIATE, MILITARY INTELLIGENCE MEASURES INTENDED TO INVESTIGATE AND TO COUNTER THESE ACTIVITIES, INCLUDING, UNDER THE RETAINED AUTHORITY OF THE UNITED STATES AS OCCUPIER, THE MONITORING OF POSTAL AND TELEPHONE COMMUNICATIONS WITHIN ITS SECTOR OF BERLIN. IN THE ABSENCE OF SUCH EFFORTS, UNIMPEDED ACTIVITIES DIRECTED AGAINST UNITED STATES FORCES WOULD GRAVELY HINDER THE ACCOMPLISHMENT OF THEIR MISSIONS. END TEXT.

4. IF TIME PERMITS, WE WOULD SUGGEST FOLLOWING COMMENTS BE CONSIDERED IN LIGHT OF PROBABILITY THAT AFFIDAVIT WILL ATTRACT ATTENTION IN BERLIN AS OFFICIAL STATEMENT ON U.S. POLICY IN AND ON BERLIN BY OUR SENIOR OFFICIAL IN CITY:

A. PHRASE IN FOURTH SENTENCE OF PARA 2, "THE THREE WESTERN SECTORS OF BERLIN HAVE BEEN SUBJECT TO..." IS CONFUSING. IT RAISES QUESTIONS IN ALTERNATIVE "SINCE WHEN" OR "ARE THEY STILL." WE SUGGEST SAYING "ARE SUBJECT TO."

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B. FINAL SENTENCE OF PARA 5 IS MISLEADING. ALLIES HAVE INSISTED THAT THERE SHOULD BE UNIMPENDED MOVEMENT WITHIN FOUR SECTORS OF BERLIN AND HAVE INSISTED ON THIS AS RIGHT FOR MEMBERS OF THEIR OWN FORCES. THEY HAVE NOT MAINTAINED THIS POSITION IN GENERAL, HOWEVER, AS WALL TESTIFIES. WE SUGGEST SENTENCE WOULD BE MORE ACCURATE IF IT FOLLOWED EARLIER DRAFT, VIZ., "FURTHERMORE, SINCE THE ALLIES BELIEVE THAT MOVEMENT WITHIN THE FOUR SECTORS SHOULD BE UNIMPEDED, THERE IS READY ACCESS TO THE WESTERN SECTORS FROM THE SOVIET SECTOR."

C. SECOND SENTENCE OF PARA 6 RETAINS CONFUSING PHRASE "BERLIN HAS LONG BEEN REGARDED AS SYMBOLIC OF OUR COMMITMENT... TO PARTIES TO OUR TREATY OBLIGATIONS..." IF THIS IS MEANT IN BERLIN CONTEXT, IT IS SAYING THAT BERLIN IS SYMBOLIC OF OUR COMMITMENT TO, AMONG OTHERS, THE SOVIET UNION. PRESUMABLY WHAT IS MEANT IS THAT BERLIN IS SYMBOLIC OF OUR COMMITMENT "TO OUR INTERNATIONAL OBLIGATIONS."

D. WE WOULD RECOMMEND DELETION OF THIRD AND FOURTH SENTENCES OF PARA 6 FOR ESSENTIALLY SAME REASON AS WE RECOMMENDED DELETION OF FINAL SENTENCE OF PARA 6 OF EARLIER DRAFT. STATEMENT MAY BE TRUE BUT IT IS POLITICALLY UNDESIRABLE TO ARGUE PUBLICLY IMPORTANCE TO U.S. AND NATO OF "BERLIN'S STRATEGIC LOCATION DEEP WITHIN COMMUNIST TERRITORY," OR TO IMPLY CITY IS IMPORTANT AS INTELLIGENCE LISTENING POST FOR US.

E. PARA 7 IS IMPROVED BUT STILL, IN OUR VIEW, DEFICIENT AND NOT RELEVANT TO LAW SUIT. FIRST SENTENCE, WITH TWO LONG INTRODUCTORY CLAUSES STRUNG TOGETHER, IS CUMBERSOME AND HARD TO UNDERSTAND. IT IS NOT CLEAR TO US WHAT IS MEANT BY "CONDUCT EMBARRASSING TO THE PRESENCE OF THE ALLIES", TO PREVENT WHICH "COMMAND MUST TAKE EVERY PRECAUTION NECESSARY." FINAL SENTENCE OF PARAGRAPH STRIKES US AS GRATUITOUS AND SUBJECT TO SENSATIONALIZING IN CITY. PARA 5 AND 6 HAVE ALREADY EMPHASIZED CITY'S ISOLATION, VULNERABILITY AND SPECIAL IMPORTANCE TO U.S.

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INTERESTS SUFFICIENTLY. ACCORDINGLY, WE WOULD PREFER TO SEE PARAGRAPH DELETED.

F. WE WOULD STILL PREFER TO SEE FINAL SENTENCE OF PARA 8 DELETED AS MISLEADING AND REDUNDANT IN LIGHT OF STATEMENT IN FIRST SENTENCE OF PARA THAT MILITARY MISSION OF TROOPS IS TO PROVIDE SECURITY FOR WESTERN SECTORS. IF DEPARTMENT WISHES IDEA RETAINED, HOWEVER, WE THINK THEORETICAL ASPECT OF THIS MISSION COULD BETTER BE CONVEYED BY REWORDING AS FOLLOWS: "IN ADDITION, WERE A CIVIL DISTURBANCE, WHETHER OR NOT FOMENTED FROM OUTSIDE THE WESTERN SECTORS, EVER TO EXCEED THE CAPABILITY OF THE BERLIN POLICE TO DEAL WITH IT, OUR FORCES MIGHT BE REQUIRED TO ASSIST THE POLICE IN PRESERVING THE INTERNAL SECURITY OF THE CITY."

G. AS POINTED OUT PARA 14 J REFTL, NONE OF EXAMPLES OF HOSTILE ACTIVITY CITED IN PARA 10 CAME FROM FOREIGN INTELLIGENCE SERVICES. FIRST SENTENCE WOULD PROBABLY BE BOTH MORE ACCURATE AND MORE RELEVANT TO PRESENT LAWSUIT, THEREFORE, IF IT WAS REVISED TO READ "EXAMPLES OF THE LATTER TYPE OF ACTIVITY WITHIN THE LAST THREE YEARS INCLUDE...."

H. IT WOULD BE USEFUL TO KNOW WHERE AND HOW AFFIDAVIT IS INTENDED TO FIT INTO MEMORANDUM OF LAW. WE RECALL THAT PREVIOUS DRAFT OF THAT DOCUMENT INDICATED USCOB AFFIDAVIT WAS TO ILLUSTRATE THAT INABILITY OF ALLIES TO CONTROL SITUATION IN WEST BELIN "COULD CONCEIVABLY INVITE A SOVIET MILITARY OR DIPLOMATIC REACTION," AND THIS WAS JUSTIFICATION FOR ALLIES MAINTAINING RIGHT TO TAKE ALL NECESSARY INTERNAL SECURITY MEASURES. IF SIMILAR ARGUMENTATION WERE TO BE RETAINED IN MEMORANDUM OF LAW, THIS WULD HEIGHTEN OUR CONCERN ABOUT CERTAIN AMBIGUOUS PORTIONS OF DRACT, PARTICULARLY PARA 7. WE NOTE CAPTAIN KIRBY SAYS IT IS HIS UNDERSTANDING THAT ARMY GENERAL COUNSEL'S OFFICE WISHES TO SET AFFIDAVIT "IN CONCRETE" TO ASSIST IN PROCESS OF DETERMINING STILL OPEN QUESTIONS ON MEMORANDUM OF LAW.

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5. ACTION REQUESTED: DEPARTMENT TO CONSIDER ABOVE SUGGESTIONS, RAISE THEM AS IT CONSIDERS APPROPRIATE WITH DEPARTMENT OF ARMY AND INSTRUCT US WHETHER CHANGES SHOULD BE MADE IN TEXT OR AFFIDAVIT MAY BE EXECUTED BY USCOB. EMBASSY TO REVIEW TEXT AND PASS VIEWS TO USCOB. WE WOULD ALSO APPRECIATE INSTRUCTION FROM DEPARTMENT ON MORTENSEN AFFIDAVIT TRANSMITTED BERLIN 872.

6. SUBSEQUENT TO DRAFTING ABOVE, WE HAVE BEEN ADVISED

BY DEPTOFF IN TELCON THAT THERE IS TIME TO CONSIDER
FURTHER IMPROVEMENTS IN TEXT PRIOR TO JUNE 6
SUBMISSION DATE, AND THAT CAPTAIN KIRBY WILL BE ADVISED
HE NEED NOT WAIT IN BERLIN FOR EXECUTION OF AFFIDAVIT.KLEIN

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